



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Roderick Lee Mitchell, M.D.  
Decision and Order**

On June 10, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Roderick Mitchell, M.D. (Respondent), of Daingerfield, Texas. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AM1375179, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that he "do[es] not have authority to handle controlled substances in the State of Texas," the State in which he is registered with DEA. Show Cause Order, at 1 (citing 21 U.S.C. 824(a)(3)).

As the factual basis for the action, the Show Cause Order alleged that on November 30, 2012, "[t]he Texas Medical Board issued a [f]inal [o]rder . . . which immediately revoked [Respondent's] license to practice medicine in the State of Texas." *Id.* The Show Cause Order also alleged that Respondent's Texas Department of Public Safety Controlled Substances Registration had "expired on January 23, 2013." *Id.* The Order thus alleged that Respondent is "currently without authority to handle controlled substance in the State of Texas." *Id.* Finally, the Show Cause Order notified Respondent of his right to either request a hearing or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *See id.* at 2 (citing 21 CFR 1301.43).

On June 14, 2013, a DEA Diversion Investigator (DI) and Task Force Officer (TFO) went to Respondent's residence in an attempt to personally serve him with the Show Cause Order. GX 2, at 3. The DI and TFO identified themselves to the person who answered the door, and who, based on Respondent's driver's license photo, appeared to be the Respondent; however, the person denied that he was Respondent. Id. According to the DI, this person shouted to them, "[y']all need to stop harassing me" and slammed the door shut. Id. at 4.

Later that same day, the DI mailed two copies of the Show Cause Order to Respondent: one by Certified Mail, Return Receipt Requested, the other by first class mail. Id. On June 17, Respondent received the mailing, as evidenced by both the signed return receipt card and a print-out from the U.S. Postal Services Track and Confirm webpage. GX 5, at 3-4.

Moreover, on July 2, 2013, Respondent wrote a letter to the DEA Resident Office in Tyler, Texas and enclosed a copy of a New Mexico Controlled Substance Registration. GX 9, at 3-4. Therein, Respondent wrote: "This should clear up the issue of my ability to possess a DEA license. Please contact my attorney and I [sic] if this does not solve the problem of my possessing a DEA license." Id. at 3. However, in the letter, Respondent did not request a hearing on the allegations of the Show Cause Order. See id. Thereafter, on October 9, 2013, the Government submitted a Request for Final Agency Action along with the Investigative Record it compiled.

Based on Respondent's failure to request a hearing, I find that he has waived his right to a hearing. See 21 CFR 1301.43(b). However, pursuant to 21 CFR 1301.43(c), Respondent's July 2, 2013 letter has been "made a part of the record" and will be considered in this Decision. I make the following findings of fact.

## **FINDINGS**

Respondent is the holder of DEA Certificate of Registration AM1375179, which authorizes him to dispense controlled substances in schedules II through V, as a practitioner, at registered premises located in Daingerfield, Texas. GX 3, at 2. Respondent's registration does not expire until January 31, 2015. Id.

Respondent formerly held a medical license issued by the Texas Medical Board. However, on November 30, 2012, the Board issued a final order revoking Respondent's medical license based on findings that he "failed to meet the standard of care and did not maintain adequate medical records." GX 6, at 2-3. On December 29, 2012, Respondent filed a motion for rehearing; however, on January 18, 2013, the Board denied the motion and the order of revocation became effective the same day. Id. at 2.

Respondent also held a Texas Department of Public Safety Controlled Substances Registration. GX 7, at 2-3. However, on January 23, 2013, this registration expired. Id. Accordingly, I find that Respondent lacks authority under the laws of Texas to dispense controlled substances.

## **DISCUSSION**

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 "upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." Moreover, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. See James L. Hooper, 76 FR 71371,

71371 (2011) (citing Leonard F. Faymore, 48 FR 32886, 32887 (1983)), pet. for rev. denied, Hooper v. Holder, No. 11-2351, 2012 WL 2020079, at \*2 (4th Cir. Jun. 6, 2012) (unpublished).

This rule derives from the text of two provisions of the CSA. First, Congress defined “the term ‘practitioner’ [to] mean[] a ... physician ... or other person licensed, registered or otherwise permitted, by ... the jurisdiction in which he practices ... to distribute, dispense, [or] administer ... a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners ... if the applicant is authorized to dispense ... controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction when he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. See, e.g., Calvin Ramsey, 76 FR 20034, 20036 (2011); Sheran Arden Yeates, M.D., 71 FR 39130, 39131 (2006); Dominick A. Ricci, 58 FR 51104, 51105 (1993); Bobby Watts, 53 FR 11919, 11920 (1988).

Here, the Government has put forward unrefuted evidence that Respondent’s Texas Medical License has been revoked and that his Texas controlled substance registration has expired. While Respondent submitted a copy of a state controlled substance registration issued by the State of New Mexico, the existence of this registration is immaterial because the DEA registration, which is the subject of the Order to Show Cause, authorizes him to dispense controlled substances in the State of Texas, where it is clear he is not authorized to dispense controlled substances and thus no longer meets the statutory definition of a practitioner under the

Act. See 21 U.S.C. § 802(21). Accordingly, I will order that Respondent's Certificate of Registration be revoked and that any pending applications to renew or modify this registration be denied.

### **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(3), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration AM1375179, issued to Roderick Lee Mitchell, M.D., be, and it hereby is, revoked. I further order that any pending application of Roderick Lee Mitchell, M.D., to renew or modify the aforesaid registration, be, and it hereby is, denied. This Order is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Dated: January 15, 2014.

Thomas M. Harrigan  
Deputy Administrator

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